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US EPA RECORDS CENTER REGION 5



467470

June 3, 2005

VIA FACSIMILE & CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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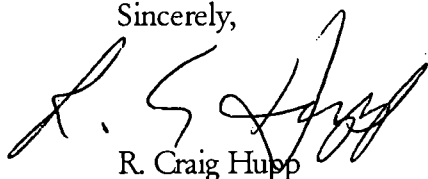
Re: Unilateral Administrative Order Issued to CSX Transportation, Inc.  
Regarding the N-Forcer Site in Dearborn, Michigan  
Docket Number: [Not Decipherable]  
Date: May 17, 2005  
Received: May 18, 2005

Dear Messrs. Kelly and Krueger:

I have enclosed for inclusion in the administrative record for the site and for the § 106 Order a table summarizing laboratory results from sampling conducted within the CSXT ROW on May 24, 2005 together with a figure showing sample locations. Full laboratory packages will follow as soon as they are received.

Thank you very much for your consideration.

Sincerely,



R. Craig Hupp

RCH/ttv

c: Mr. Paul Kurzanski  
Jeffrey Styron, Esq.  
Ms. Terri Rubis  
Fredrick J. Dindoffer, Esq.  
Phillip Goad, Ph.D.

**Draft Preliminary Soil Sampling Results  
N-Forcer Site May 24, 2005**

Client Sample Number	Type	TEM Lab ID	PLM Lab ID	Starting weight	Mass, g			TEM Analysis						PLM Amphibole Content, %		
				gm	> 10 mesh	< 10 mesh	Total	Matrix (%)	Total Asbestos (%)	Chrysotile (%)	Amphibole (%)	Non-Asbestos Structures	Amphibole Type	> 10 m	< 10 m	Total
T3L3S	Surface	5253775.HT	5253775	0.2537	54.6699	45.2961	99.9660	100	0	0	0	Trace	NA	0	< 0.25	< 0.11
T3L4S	Surface	5253777.HT	5253777	0.3466	31.4956	37.8315	69.3271	100	0	0	0	0	NA	0	0.25	0.14
T3L5S	Surface	5253779.HT	5253779	0.2484	31.7834	44.9089	76.6923	100	0	0	0	0	NA	0	< 0.25	< 0.15
T3L3S Duplicate	Surface	5253823.HT	5253823	0.3722	54.2903	45.7451	100.0354	100	0	0	0	0	NA	0	0	0
T3G1	Grab	5253825.HT	5253825	0.2559	115.3773	69.3699	184.7472	100	0	0	0	0	NA	0	0	0
T3G2	Grab	5253826.HT	5253826	0.3177	104.1725	85.2266	189.3991	100	0	0	0	0	NA	0	0	0
T3G3	Grab	5253827.HT	5253827	0.2621	96.7046	106.0441	202.7487	100	0	0	0	0	NA	0.007	0.25	0.13
T3G4	Grab	5253828.HT	5253828	0.2805	87.9995	61.3472	149.3467	100	0	0	0	0	NA	0.02	< 0.25	< 0.11
T3G5	Grab	5253829.HT	5253829	0.2555	4.6999	18.1454	22.8453	100	0	0	0	0	NA	0	0	0
T3G2 Duplicate	Grab	5253830.HT	5253830	0.2068	77.7689	63.3823	141.1512	100	0	0	0	0	NA	0	< 0.25	< 0.11
T3L1S	Surface	5253771.HT		0.3262				100	0	0	0	Trace	NA			
T3L2S	Surface	5253773.HT		0.397				100	0	0	0	Trace	NA			
T3L6S	Surface	5253781.HT		0.3592				100	0	0	0	0	NA			
T3L7S	Surface	5253783.HT		0.435				100	0	0	0	0	NA			
T3L8S	Surface	5253785.HT		0.2814				100	Trace	Trace	0	Trace	NA			
T3L9S	Surface	5253787.HT		0.624				100	Trace	Trace	0	Trace	NA			
T3L10S	Surface	5253789.HT		0.3824				100	0	0	0	0	NA			
T3L11S	Surface	5253791.HT		0.4681				100	0	0	0	0	NA			

FACSIMILE AND CERTIFIED OR EXPRESS MAIL

May 31, 2005

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Regarding the N-Forcer Site in Dearborn, Michigan  
Docket Number: [Not Decipherable]  
Date: May 17, 2005  
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Dear Gentlemen:

We appreciate the opportunity to meet with you last Friday and discuss CSX Transportation, Inc.'s ("CSXT's") response to the CERCLA § 106 Order issued on May 17, 2005.

For the reasons which follow, CSXT requests that the Order be withdrawn or in lieu of its withdrawal that USEPA suspend its effective date pending further discussions between the parties. CSXT's letter to USEPA of April 29 set forth in summary form its legal objections to the Order and we will not repeat them here -- but acknowledge that USEPA does not agree and supports the legality of its order.

We believe the Order should also be withdrawn because it is unnecessary. Although CSXT has a different view of the risk posed by trace asbestos materials in the soils in the vicinity of the N Forcer site, CSXT has responded to USEPA's requests for action in the past on a voluntary basis and will continue to do so without the need for an order. CSXT takes its obligation to protect its employees' safety seriously and will take all actions appropriate to ensure that safety with regard to conditions on the railroad property.

Even if it is not withdrawn, its effective date should be suspended for at least two reasons. First, it is apparent from our meeting last Friday, that USEPA is not clear on what removal action it desires with regard to potential contamination on CSXT Track 3. It makes sense to reach an understanding on that point before the very tight time deadlines under the Order apply. Second, USEPA has proposed that CSXT enter into a voluntary consent order. CSXT has not had an opportunity to

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consider that option or confer with USEPA with regard to the proposed terms which were just communicated to CSXT at the close of business yesterday.

### **CSXT's Actions To Date**

It is clear that USEPA places a very high priority on CSXT starting the removal action associated with the N Forcer site as quickly as possible. It is unfortunate that CSXT was unable to make it clear to the USEPA that CSXT took the USEPA's requests seriously, because it did and was acting consistently with that understanding. A brief chronology of significant contacts between CSXT and USEPA reveals that CSXT has been responsive to USEPA's desires. The chronology below does not cover all contacts between USEPA and CSXT.

CSXT first learned of USEPA's concerns at the N Forcer site in mid 2003 when it received a general notice letter. Since then by almost any standard CSXT has been reasonably responsive to USEPA in a situation in which ATSDR and Michigan Department of Community Health have stated in the Health Assessment and associated public statements that there is not a significant immediate risk from a public health perspective (recognizing USEPA may be applying different criteria in its conclusion that circumstances pose an imminent and substantial endangerment).

CSXT responded to USEPA's general notice letter by requesting a time extension to respond and, within that time, provided information to USEPA with regard to its property in the vicinity of the N Forcer site.

In the fall of 2004, USEPA contacted CSXT with regard to sampling for asbestos in the right of way (ROW) adjacent to the N Forcer site. CSXT immediately agreed to conduct such sampling. ARCADIS, CSXT's consultant, collected 14 soil samples along the ROW. CSXT's consultant went back to the site in response to Mr. Kelly's site review and correspondence and collected an additional sample of several pieces of materials designated as SB-15, in an area where USEPA had reported seeing Libby amphibole. There were ongoing communications between CSXT and USEPA in November and December with regard to these sampling activities. CSXT received a letter report from ARCADIS in early February, 2005 and forwarded that report to USEPA shortly thereafter.

In the December, 2004, USEPA contacted CSXT with inquiries as to property boundaries, ownership issues, and CSXT promptly responded.

In early April, 2005 USEPA informed CSXT that it was about to begin a removal action on the W.R. Grace property. By letter dated Thursday, April 7, 2005, it requested CSXT to undertake removal activities within the ROW. On Tuesday

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April 12, 2005, just three business days later, CSXT responded informally that it would take action.

By letter dated Monday, April 11, USEPA requested CSXT provide it an access agreement. CSXT informed USEPA of worker safety training requirements and on April 13, USEPA requested arrangements on site for safety training. On Friday, April 15, USEPA contacted CSXT with regard to taking CSXT's safety training as a prerequisite to access to CSXT's property. On Monday, April 18, CSXT responded with information about its safety training programs and followed up with several calls indicating that the safety training would be expedited. On April 18, USEPA withdrew its request for site access.

Also on Monday, April 18, USEPA requested that CSXT develop and submit a SOW for the removal which CSXT would undertake. USEPA offered to coordinate any soil disposal activities with CSXT but only if CSXT responded by April 21. Otherwise, CSXT would have to take care of disposal itself. USEPA repeated that an access agreement was not required if CSXT was going to proceed to undertake the requested removal. In this period, CSXT retained ARCADIS and Olson and Associates, L.L.C. to develop the requested SOW. Olson and Associates, L.L.C. is utilized by CSXT for asbestos regulatory and abatement activities within the CSXT system. On Friday, April 22, Olson reported to CSXT that the SOW was 98% complete and it would be completed after a site visit on Tuesday, April 26. The April 22 site review included site logistics for the SOW.

On Friday, April 29, CSXT informed USEPA by letter of "their intent to perform limited remedial activities on the CSXT Right-of-Way (ROW)." CSXT agreed as a good corporate citizen "as soon as possible, CSXT will conduct a HEPA vacuum remedial efforts of the rail ties, conduct a limited (six inches deep) excavation of the any [sic] areas that visually appear to contain this unregulated amphibole mineral, and spray an encapsulation solution on the ballast areas." CSXT informed USEPA in the letter that it would not require USEPA's assistance in disposing of any wastes.

By letter dated April 30, USEPA acknowledged CSXT's letter and stated it looked forward to receiving CSXT's work plan and requested contact at CSXT's earliest convenience to discuss anticipated schedule and clean up plans.

CSXT understood that the end of April was a critical date for USEPA, but only with regard to possible coordination of soil disposal activities. CSXT did not fully appreciate USEPA's desire to get removal within the ROW completed as soon as possible, and if CSXT had had that appreciation, CSXT would have let USEPA know that the SOW and related approvals were working their way through the railroad's internal process for official approval and work orders, *etc.* That process would have been expedited had USEPA's urgency been understood.

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At no time has CSXT withdrawn the commitment given in its April 29 letter. However, in the two weeks after April 30 it did not get back to USEPA as USEPA had requested with the work plan and schedule. That apparently led to USEPA's mistaken conclusion that CSXT did not intend to proceed and a decision to issue the Order.

### **Site Status**

USEPA has completed its removal action at the W.R. Grace property and at one offsite area, the nearby soccer field. The excavation on the W.R. Grace property has extended to the edge of the railroad property line based on an USEPA boundary survey. All sampling has been completed and WESTON is preparing a final report. USEPA is almost completely demobilized.

### **Site Sampling**

#### **USEPA**

During the meeting, USEPA described its sampling activities at the site generally and specifically near the ROW. USEPA explained that samples SC-3 and GB-1 collected during WESTON's site assessment in 2003 were recently determined to have been collected from within the ROW when James Justice, who was present when the samples were collected, was able to locate their general location in reference to the southern ROW property line which was surveyed in 2005.

USEPA also provided draft results for samples collected on early April (USGS 005), April 15 (one sample), and May 17 (CSX-001, 002, 003), also from within the ROW.

USEPA also provided the results of four composite grab samples collected from undisturbed soils beneath the areas it had excavated.

The locations of the foregoing samples were not surveyed in or permanently marked and there is no drawing to scale which locates those samples.

USEPA also collected approximately 90 samples from residential soils in the neighborhood at locations at which there was an indication that W.R. Grace materials had been used for gardening or other purposes. Only one of the approximately 90 samples had detectable Libby amphibole.

USEPA reported that it had conducted air monitoring during approximately four weeks of on site and off site excavation activities. The purpose of the monitoring was to determine if excavation activities were causing suspension of asbestos. The monitoring did not detect any airborne asbestos.

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### CSXT

The results of the ARCADIS sampling discussed above indicated that the sampled soils did not contain detectable asbestos fibers. However, one of the three pieces of material collected as SB-15 was identified as Libby amphibole. During Friday's meeting, clarification was sought on three points. First, there was a question as to the detection limits. CSXT believes they were on the order of 0.1% but was unable to confirm that during a call to the lab during the meeting. There was a question whether the reported laboratory results were limited to detections of the 6 specific asbestos minerals listed under OSHA and TSCA. During the meeting we called the lab and they stated that the detection of any asbestiform mineral would have been reported. We will obtain written confirmation from the lab on that point as well as the laboratory detection limits. Finally, there was a question as to which sample(s) the APEX letter of January 10, 2005 referred to. It is our understanding the letter was limited to the three large pieces of material (and specifically the one out of the three pieces which was determined to contain Libby amphibole) collected as SB-15. Again, we will confirm this.

On Monday through Wednesday of last week, CSXT consultants (CTEH L.L.C., RJ Lee Group, Inc., ARCADIS G&M of Michigan, L.L.C., and Olson and Associates, L.L.C.) conducted site inspection and data collection activities in the CSXT ROW. Approximately 30 soil samples were collected and located with GPS along a grid the width of its property and about 1000' long, centered approximately on the midpoint of the W.R. Grace property. While most samples were taken from grid points, some samples were collected along Track 3, a siding track along the eastern border of the WR Grace property, in areas where vermiculite flakes were visible on the surface. During our Friday meeting we discussed the preliminary results of polarized light microscopy (PLM) analysis of eight samples and transmission electron microscopy (TEM) analyses of 16 samples obtained from the site that week. The highest PLM result was 0.25% amphibole, while the highest TEM result was "trace," or approximately 0.1 – 0.3% amphibole by weight.

It should be noted per the current EPA AHERA regulation, 40 CFR 763, if these sample results (PLM and TEM analysis) were associated with friable or nonfriable suspect building materials (Thermal System Insulation, Surfacing, and Miscellaneous) that were located in a functional space with schoolchildren present (grades K thru 12, public, private, and US military base schools), these analysis results would be below the regulated EPA AHERA asbestos level of greater than 1% and therefore these building materials could remain in the school as a non asbestos building material. These non asbestos building materials would not be included in the school asbestos management plan and/or part of any asbestos response actions. In addition, the building materials with asbestos levels of 1% or less could be involved in school renovation, demolition, and maintenance activities.

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Building materials with results of 1% or less would not require asbestos engineering controls or special work practices since these building materials would be deemed non asbestos. In fact, under the EPA AHERA regulation, the children could actually remain in the school building in the general vicinity during these construction and/or maintenance activities per the EPA asbestos definition. Thus soils in the ROW do not appear to pose a significant public health risk.

This sampling effort probably meets or exceeds any pre-removal sampling that would have been developed as part of the work plan required under paragraph 3 of the Order.

Both CSX and USEPA agreed to exchange full data packages for all of the above referenced sampling, ideally as soon as it is available.

#### **Visually Observed Materials**

The parties agreed that there was no visible evidence of vermiculite on the CSXT mainline tracks (Tracks 1 and 2) but that there was visible evidence of vermiculite on certain portions of Track 3, the track closest to the W.R. Grace property. CSXT discussed the importance of distinguishing between vermiculite and amphibole. While the presence of visible vermiculite, presumed to be from the Libby mine, could be indicative of potential presence of Libby amphibole, the mere observation of vermiculite does not automatically mean that amphibole is also present. This was confirmed by the CSXT sampling on Track 3 where not all of the samples with visible vermiculite had detectable amphibole when examined microscopically. It was also noted that only very small amounts of visible amphibole fragments have been observed to date on CSXT property, mainly in the vicinity of sample SB-15.

USEPA reported that during the excavation of soils on the N-Forcer site, fill materials were encountered which appeared to contain Libby amphibole materials and/or evidence of vermiculite ore or processed vermiculite. This fill extends in some points more than 18" below the ground surface and was visible in soils on the eastern-most boundary of the WR Grace property, presumably extending some unknown distance onto the ROW. It is not clear to CSXT whether all of the non-native materials contained amphibole fragments, but it accepts for the purpose of going forward that the materials had their origin at Libby and some part of such materials could be Libby amphiboles.

Two individuals among CSXT's team last week have spent time at the Libby mine site and are familiar with the appearance of Libby amphibole. They found no evidence of this material on the surface in the ROW in the vicinity of Track 3 and no evidence of its presence along Tracks 1 and 2.



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### **Summary of Data and Visual Observations**

CSXT interprets the data collected by USEPA and CSXT to show that there is not widespread asbestiform contamination in soils within the ROW. None of the samples CSXT collected and analyzed to date, including those with visible vermiculite fragments, contained Libby amphibole in excess of the 1% level requiring soil removal in the CERCLA § 106 order issued on May 17, 2005.<sup>1</sup> Only two or three samples collected by USEPA from within the ROW met the 1% threshold. However, there is evidence of Libby materials in the soil and small pieces of Libby amphibole have been found infrequently on the surface, mostly towards the eastern corner or the W.R. Grace property in the vicinity of SB-15.

CSXT believes that Track 3 long predates W.R. Grace's occupancy of the property and therefore Libby material should not be under the Track 3 track bed.

### **USEPA's Proposed Removal Action**

It is CSXT's understanding that USEPA proposes any near surface (18" depth) soils containing Libby amphibole in the ROW, but outside the track bed of Track 3, be removed and a geotechnical material barrier placed on soils beneath that depth and clean fill placed on top. At Fridays meeting, USEPA expressed the desire for further consultation and thought with regard to activities between the width of the ties on Track 3.

### **Proposed Action**

We believe that an agreement was reached on how to proceed with regard to the presence of Libby amphibole in the ROW between the property line and Track 3. CSXT will remove all soils which appear to contain Libby amphibole, starting at the eastern end of the W.R. Grace property and moving northwest along the right of way. The removed depth will be 18" and the backfill will be placed on top of geotechnical membrane having substantially the same specifications as that used by USEPA. Soils will be visually examined as excavation proceeds. CSXT at its option can proceed by digging continuously, by using test pits in advance of the excavation or by sampling for the presence of amphibole-contaminated fill.

Options were discussed with regard to the bed of Track 3 without a conclusion. CSXT had previously offered to HEPA vacuum the track bed and encapsulate by an

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<sup>1</sup> CSXT also notes that no sample analyzed to date from the ROW contains amphibole in excess of the 0.5% level specified for removal of soils from residential properties in the vicinity of the N-Forcer site pursuant to the March 2005 Quality Assurance Project Plan for W.R. Grace, Dearborn, Michigan.

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unspecified method but the site inspection last week raises some question whether that would be a useful or the best approach. Another option discussed was the placement of new ballast on the track which would prevent disturbance of any impacted material. As we understand it, USEPA is going to consider this further and have further discussions with CSXT. It would be helpful to know how the track areas at the Western Minerals sites in Denver and Minneapolis were handled.

CSXT is prepared to proceed with the soil removal immediately and before a strategy for the Track 3 track bed is finalized.

USEPA and/or its contractor may be present during excavation activities after railroad safety training. CSXT will arrange for training in the Detroit area in the near future at everyone's mutual convenience. It may be that the best time to do it is the day site excavation activities are kicked off.

In carrying out the activities, CSXT will perform the activities set forth in Paragraph 3 of the Order.

We would expect USEPA assistance in obtaining access from N Forcer and would use its parking lot as a staging area. CSXT would be responsible for repair of any damage.

In addition, it may make sense to remove the rest of the siding track and switch into the N Forcer property which work would be coordinated with the soil removal and require some coordination with maintenance and way crews.

#### **Schedule for Work**

CSXT is prepared to provide a SOW, HASP and QAPP by June 17, the same date those deliverables would be due under the Order. CSXT will commence soil removal activities expeditiously after receipt of USEPA approval of those deliverables, subject to final scheduling of contractors and coordination with railroad engineering. Commencement of work also would be subject to scheduling railroad safety training but we expect that can be completed in advance of or at the time of commencement of the work. We will identify the subcontractors and analytical laboratories at the time CSXT submits the SOW.

CSXT is prepared to address issues related to Track 3 expeditiously after reaching agreement with USEPA on the most practical approach. As indicated at the meeting, that schedule will probably not be immediate because of the need to fit such activities into other maintenance of way activities. CSXT will give such activities priority but an activity like reballasting the tracks may take a few months.

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CSXT does not believe that conditions within the Track 3 track bed pose an immediate risk to its workers or others.

#### **Access to ROW**

As noted above, USEPA and its contractors can have access to the soil removal work area during work activities and we see no need for a separate access agreement under those circumstances. Let us know if USEPA considers such an agreement still necessary. If so, we will process one quickly to meet the proposed schedule above. USEPA agreed that it will not enter the ROW without adequate prior notice to CSXT and without completing the railroad safety training. For access purposes, notice should be given to Roadmaster Michael Cameron at 734-231-5373. at least 48 hours in advance.

#### **Contacts and Communication**

Paul Kurzanski is the proper contact for all matters related to these activities. He should also be given notice of site access requests. Terri Rubis of ARCADIS will be CSXT's program manager. USEPA has contact information for both of these individuals.

Brian Kelly is the proper contact for USEPA.

We encourage email confirmation of any attempted telephonic contacts in which a message is left of voice mail. A written email record will help maintain a clear record of communication.

#### **Continued Opposition to 106 Order**

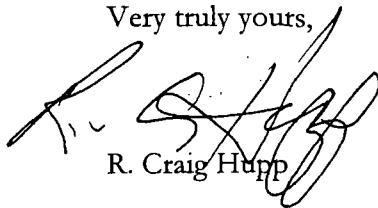
Because CSXT has already made a written commitment on April 29 (just over two weeks before the Order was issued) to undertake the removal action sought by USEPA and was implementing that action by developing a SOW for submission to USEPA at the time the order was issued and will continue its performance, there is no need for the Order. CSXT has agreed to carry out a soil removal activity outside the track bed for Track 3 in the manner desired by USEPA and has agreed to reach an agreement with USEPA on activity within that track bed.

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Mr. Krueger raised the possibility of an ACO in lieu of the 106 Order. Again CSXT does not see the order as needed. Further, CSXT believes it can have the soil removal completed before an ACO is signed.

Accordingly, we repeat our request that the Order be withdrawn and CSXT be permitted to proceed with the work on a voluntary basis, just as it has always intended to do.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. Craig Hupp", is written over the typed name. The signature is stylized with a large, sweeping "H" and "P".

RCH/cmf

c: Paul Kurzanski, Jeffrey Styron, Fredrick Dindoffer, Terri Rubis, Phillip Goad